

REMARKS/ARGUMENTS

Enclosed herewith is a Terminal Disclaimer. Accordingly, the double patenting rejection is overcome.

Pending claims 1-3, 6-10 and 12-14 stand rejected under 35 U.S.C. §103(a) over U.S. Publication No. 2004/0014423 (Croome) in view of U.S. Patent No. 6,240,079 (Hämäläinen). As to claim 1, this rejection is overcome because neither reference anywhere teaches or suggests that data transmission remains within limits of a desired level of service via dynamically adjusted time slots and at least one short-range wireless medium. In this regard, the Office Action relies on Hämäläinen for a teaching of dynamic adjusting of time slots. However, Hämäläinen nowhere teaches or suggests performing data transmission using both dynamically adjusted time slots and at least one short-range wireless medium. Nor does Croome.

The rejection of claim 1 over the proposed combination is further improper, as there is no legally sufficient motivation to combine the references. In this regard, all that the Examiner states is that it would have been obvious to modify Croome and Hämäläinen, then the Office Action proceeds to recite the subject matter of claim 1. Office Action p. 4. This alleged motivation is conclusory and lacks a legally sufficient basis for the proposed combination. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2001). Even further, it is apparent that the proposed combination is nothing more than hindsight-based reconstruction, in contravention of well established Federal Circuit precedent. *E.g., In re Kotzab*, 55 U.S.P.Q.2d 1313, 1316-17 (Fed. Cir. 2000). Accordingly, the rejection of claim 1 and its dependent claims is clearly erroneous. For at least these reasons claim 1 and the claims depending therefrom are patentable over the proposed combination.

Independent claims 8 and 12 and the claims depending therefrom stand rejected under 35 U.S.C. § 103(a) over Croome and Hämäläinen. However, as to both of these claims, the Office Action appears to contend that Croome, standing by itself, teaches the recited subject matter. Furthermore, it is noted that the Office Action's basis for relying on Croome has changed. In this regard, in previous Office Actions, which caused Applicant to file a Notice of Appeal and a Pre-Appeal Brief Request for Review, the Office Action contended that it was wireless access mechanisms 104 and 1104 of Croome that met the recited first and second wireless media. Apparently, the Panel's decision to issue a new Office Action has overcome this contention.

Instead, the Office Action now contends that it is two different wireless devices 400 and 401 set forth in FIGS. 4A and 4B and paragraphs 93-97 of Croome that "read on first and second wireless...through the common wireless medium." Office Action, p. 5. Applicant respectfully disagrees in this regard. Specifically, claims 8 and 12 recite that one of multiple wireless media is selected as a common wireless medium for a mobile station. That is, a common medium is selected *for a single mobile station*. The Office Action's pointing to multiple wireless devices does not teach or suggest either a selection of one wireless medium as a common medium, or routing data transmission through such a common medium. Furthermore, there is no teaching in Croome that these separate wireless devices in communication with each other secure access to a base station using a SIM card, where this is a predicate for selecting one of the wireless media as a common medium. Nor does Hämäläinen add anything in regard to the subject matter of claim 8. Accordingly, for at least these reasons claims 8 and 12 and the claims depending therefrom are patentable.

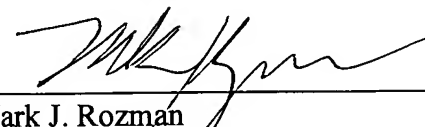
The rejection of claims 4, 11 and 15-17 under §103(a) over Croome in view of Hämäläinen and in further view of an additional reference to Melaku is clearly erroneous at least for the same reasons as the independent claims from which these claims depend.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

Date: _____

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